

Februray 28, 1997

**SPECIAL PUBLIC NOTICE
GENERAL PERMIT GP 95-003 FOR
TARO LO'I RESTORATION IN THE STATE OF HAWAII**

1. Interested parties are hereby notified that a general permit authorizing restoration of abandoned taro lo'i (fields) and farming of taro in waters of the United States, including wetlands, in the State of Hawaii, is being issued to the general public, groups, and agencies, effective this date.
2. A copy of the general permit is attached. Please note excluded areas and the limitations and conditions on work to be authorized by GP95-003.
3. A public notice announcing the proposed general permit was issued on September 14, 1995. The notice listed the proposed limitations and conditions of the general permit and invited comments from interested parties.
4. All appropriate comments received in response to the public notice were incorporated into the general permit and addressed when the permit and the Statement of Findings to support issuance of the permit were prepared.
5. The Corps received a blanket Coastal Zone Management (CZM) Program consistency determination that covers all projects authorized by GP95-003 on January 27, 1997. All conditions of the consistency determination are incorporated in and made part of the general permit. The Corps deemed the Section 401 Water Quality Certification (WQC) for GP95-003 waived. Therefore, applicants for general permit GP95-003 do not require individual WQC or CZM consistency determinations.
6. Interested parties are invited to submit any additional comments and suggestions to help us improve this and other general permits. Written comments should be sent to the address shown on the letterhead and should refer to GP95-003. Further information may be obtained from Operations Branch, Building T-1, Fort Shafter, telephone (808) 438-9258.

Effective Date: February 28, 1997
Expiration Date: February 28, 2002

**DEPARTMENT OF THE ARMY
GENERAL PERMIT GP 95-003
TARO LO'I RESTORATION IN THE STATE OF HAWAII**

1. INTRODUCTION: In accordance with Part 325 of Title 33, Code of Federal Regulations, the District Engineer of the U.S. Army Corps of Engineers, Honolulu Engineer District (Corps), authorizes this general permit pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Under this general permit, the Secretary of the Army authorizes the general public, groups, and public agencies public to restore abandoned taro lo'i (fields) and farm taro in waters of the United States, including wetlands, under the jurisdiction of the Honolulu Engineer District, subject to the following specifications, limitations, and conditions.

2. APPLICABLE AREAS: This permit applies to waters of the United States in the State of Hawaii that meet the following characteristics:

- a. The area has been cultivated in taro in the past.
- b. The area retains indications of taro cultivation. Such indications include: existing berms/dikes, existing and/or abandoned auwai (irrigation canals), and/or identification on aerial photographs. Identification on historic maps, deeds or other documents as a lo'i or lo'i system is also sufficient.
- c. The area is presently abandoned (i.e., has not been farmed in any crop for five or more years) and has been delineated as a jurisdictional water of the U.S.

Please note that a Department of the Army (DA) permit is not required for taro farming or lo'i restoration work that does not impact waters of the U.S. Waters of the U.S. include, but are not limited to, coastal areas, wetlands, streams, some auwai.

3. SPECIFICATIONS AND LIMITATIONS: This permit authorizes the following activities:

- a. Clearing and/or removal of existing vegetation.
- b. Excavation and discharge of dredged or fill material, including vegetation and discharges incidental to excavation activities, within the lo'i for the purposes of readying the field for cultivation and for the planting itself.

- c. Reconstruction and maintenance of existing berms, including placement of fill or excavated material.
- d. Soil tilling, including harrowing, disking, or other means, by hand or mechanical equipment.
- e. Planting, maintenance, and harvesting of taro and other appropriate replacement/rotation crops (e.g., other wetland crops such as rice, lotus, or ong choy) within the lo'i.
- f. Discharge of fill to divert irrigation water from existing auwai.
- g. Repair and reconstruction of existing auwai, including sediment excavation or dredging, to conform, as closely as possible, to original dimensions.
- h. Repair and replacement of existing diversions (i.e., "waterheads") in existing auwai and streams.
- i. This permit does not limit the areal extent of projects, but limits land disturbance to a maximum of one acre at any one time.

4. EXCLUDED AREAS AND ACTIVITIES: This general permit does not authorize the following:

- a. Restoration of taro lo'i when the Corps determines that the public interest requires regulation through an individual permit.
- b. Excavation of new auwai in wetland areas or development of new taro lo'i in previously undisturbed areas.
- c. Construction of new waterheads (diversions) in natural streams or rivers.
- d. Restoration of taro lo'i in areas where properties included in or eligible for inclusion in the National Register of Historic Places are located, unless the State Historic Preservation Officer has determined that the authorized activities would have "no adverse effect" on historic properties.
- e. Restoration of taro lo'i in areas where federally listed species or their designated critical habitat would be adversely affected.
- f. Restoration of taro lo'i in Class I waters (as defined in the Hawaii Administrative Rules, Title 11, Department of Health, Chapter 54, Water Quality Standards) that are currently used, or have the potential to be used, for drinking water.
- g. Discharges of significant quantities of fill in established regulatory floodways, unless engineering analyses demonstrate that the proposed work will not result in an increase in flood levels in the area during the base flood discharge.

h. A change in use of the project area (e.g., from wetland taro production to upland papaya farming).

5. GENERAL CONDITIONS: The following general conditions apply to all activities authorized under this general permit:

a. You must maintain the restored lo'i, water diversions, and other work authorized by this general permit in good condition and in conformance with all terms and conditions of this permit. This requirement remains valid if you abandon the permitted activity, although a good faith transfer to a third party may be made in compliance with General Condition c. Abandonment of authorized projects may require restoration of the area.

b. If you discover any historic or archaeological remains during construction or operation of the permitted activity, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

c. If you sell or transfer the property associated with an authorized project, you must obtain the transferee's written agreement to comply with all terms and conditions of this permit. You must forward a copy to this office to validate the transfer of authorization.

d. You must allow representative(s) from this office to inspect the permitted activity at any time deemed necessary to ensure that it is in compliance with the terms and conditions of this permit.

e. This permit does not grant any property rights or exclusive privileges.

f. This permit does not authorize any injury to property or rights of others.

g. You must obtain any other Federal, State or local approvals required by law.

h. This permit does not authorize interference with any existing or proposed Federal project.

i. In issuing authorizations under GP 95-003, the Federal Government does not assume any liability for the following:

(1) Damages to the permitted project or its use as a result of other permitted or unpermitted activities or from natural causes.

(2) Damages to the permitted project or its use as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

(3) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activities authorized by GP 95-003.

(4) Design or construction deficiencies associated with the permitted work.

(5) Damage claims associated with any future modification, suspension, or revocation of GP 95-003 or any individual authorization.

j. The determination of this office that issuing a permit for an individual project under this general permit is not contrary to the public interest was made relying on the information you provide in connection with the request for work authorization.

k. This office may reevaluate its decision on this general permit or an individual authorization at any time the circumstance warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

(1) You fail to comply with the terms and conditions of this general permit.

(2) The information you provided in connection with the request for work authorization proves to be false, incomplete or inaccurate.

(3) Significant new information surfaces which this office did not consider in reaching the original decision to issue the general permit or an individual authorization.

Reevaluation may result in a determination to modify, suspend or revoke the general permit or an individual authorization or to use enforcement procedures. Enforcement may lead to legal action where appropriate. You will be required to pay for any corrective measure ordered by the Corps.

l. If an individual activity authorized by this general permit is not completed within two years of authorization (the Notice of Authorization will specify expiration date) the authorization, if not previously modified, revoked or specifically extended, will automatically expire. Activities which have commenced, or are under contract to commence before the date of the expiration will have twelve months to complete the activity under the present terms and conditions of the general permit. If the general permit GP 95-003 expires prior to the expiration date on the Notice of Authorization, the terms and conditions of GP 95-003 will remain valid until such date.

m. Unless circumstances exist that require prompt completion of the authorized activity or a reevaluation of the decision to permit a project, the Corps will normally give favorable consideration to a request for an extension of the time limit for completing the permitted work.

6. SPECIAL CONDITIONS: The following special conditions apply to all activities authorized under this general permit. The purpose of these special conditions is to ensure that no adverse water quality or other environmental impacts occur as a result of the restoration of taro lo'i.

a. When the Corps is appropriately notified by either the U.S. Fish and Wildlife Service or the State Department of Land and Natural Resources that an individual activity or activities is adversely affecting fish or wildlife resources or their harvest, the Corps will direct the permittee(s) to perform remedial measures. The permittee(s) must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect.

b. No activity authorized by this general permit may substantially disrupt the movement of those species of aquatic life indigenous to any natural stream, including those species which normally migrate through the area.

c. You must take extreme care to ensure that no debris, petroleum products, or other deleterious materials or wastes be allowed to fall, flow, leach, or otherwise enter any water body.

d. Berms may not exceed three feet in height (as measured from the bottom of the lo'i). Material to be used for fill and/or berm restoration must consist of clean sediment or soil, preferably obtained at the site.

e. All exposed banks, including lo'i berms and the banks of auwai must be stabilized with vegetation. Vegetation must be established immediately upon completion of construction activities, either by seeding and/or with cuttings. Vegetation may require fertilization and/or temporary irrigation to become established. To the extent practicable, berm plantings should consist of native species. Vegetation on the berms should be mowed or cut by hand once it has become established. Burning of vegetation on berms requires a permit from the State Department of Health and County Fire Department and may vary by island

f. Where possible and practicable, existing inlets and outlets to lo'i and auwai will be restored and used. However, outlets should be placed far enough above the bottom of the field to minimize the amount of sediment leaving the lo'i.

g. Where possible and practicable, outflow from lo'i must be discharged into adjacent lo'i or the same auwai from which the water was diverted.

h. Diversions (waterheads) must be repaired or reconstructed of concrete, wood, or some other stable material. Gravel or other unconsolidated material can be used only for diversions within auwai.

i. Reconstruction or repair of water diversions, or other activities that may involve soil disturbance within the water, can occur only after water flow has been stopped or has been diverted away from the area of construction.

j. Construction or operation of the permitted activities cannot adversely impact flooding in downstream or upstream areas.

k. No pesticides are permitted in the lo'i or in auwai. Only pesticides registered for use on berms and along waterway banks are permitted for use. Follow all instructions on the pesticide label.

l. All staging and storage areas must be located outside of waters of the U.S.

m. You must take all precautions necessary to ensure that reconstruction and production activities do not adversely impact federally listed Hawaiian waterbirds (Hawaiian stilts, coots, ducks and moorhen).

n. An individual (who can be the applicant) will be designated responsible for all monitoring and for ensuring that authorized activities are performed with a minimum of environmental harm. This individual's name and a contact telephone number must be provided to the Corps. This person will perform, or be responsible for, monitoring before, during and after construction. This person will also report appropriate information to the Corps.

o. You must perform monitoring consisting of visual inspection of the project site(s), documented with photographs and written descriptions, whichever are most appropriate. Photographs should be taken prior to, during and after reconstruction activities, as well as (to the extent possible) before, during and after unusual events, such as large storms. Particular care will be made to document increases in turbidity (muddy water) outside of the lo'i or water diversion site as well as actions taken to minimize the spread of turbidity.

p. If you observe a turbidity plume and/or floating petroleum (oil) outside of the lo'i or water diversion site, the designated individual will be responsible for stopping on-going in-water work (such as excavation). You must notify the Corps as soon as practicable and modify the activity causing the plume so that spread of the plume or oil is contained. The responsible individual will report the event and the measures taken to correct the situation (including photographs) to the Corps as soon as practicable. Work shall continue only after the plume or oil is no longer visible.

q. Water inlets and outlets must be closed off before and during the following activities to minimize the spread of turbidity downstream:

- (1) soil cultivation
- (2) application of soil ammendments such as lime or fertilizer (see Special Condition "r")
- (3) planting
- (4) harvesting

If water levels need to be increased during or following any of these operations, inlets may be opened, but outlets must remain closed. The outlet should not be opened until the water within the lo'i is clear. To the extent practicable, the lo'i and surrounding berms should be dry before the start of any excavation or filling activities.

r. Soil should be tested to determine proper fertilizer application rates. Lo'i outlets must be closed for at least one week after the fertilizer has been applied. Animal waste must not be used as a soil ammendment, but "green manure" (vegetation debris) is acceptable and may be preferred in some instances. Additional fertilizer may be applied during the growing season. Again, the inlet and outlet to the lo'i will be blocked off during this process and no flow-through of irrigation water should occur for at least one week following the start of fertilizer application to minimize downstream impacts of increased nutrients.

7. PROCEDURES FOR WORK AUTHORIZATION: You must use the following procedures for authorization of individual activities under this general permit:

a. You must notify this office in writing of the proposed work at least 30 days prior to the planned date of work. The notification must include map(s) and drawings which show the lo'i to be restored, its (their) dimensions, location, and a description of the proposed construction practices.

b. When the Corps receives sufficient information from the applicant, the Corps will notify the State Historic Preservation Officer, U.S. Environmental Protection Agency, Natural Resources Conservation Service, U.S. Fish and Wildlife Service, Coastal Zone Management Program Office, Department of Health and the State Department of Land and Natural Resources, Water Commission and request comments on the proposed activity.

c. This office will review the request to determine if the proposed activity conforms to the conditions of the general permit. If the proposed project can be authorized under the general permit, we will inform the applicant in writing. You cannot begin any work in waters of the U.S., including wetlands, prior to receipt of the letter of authorization. If the proposed work does not conform to the general permit, this office will notify the applicant that the application must be processed under the Corps' individual permit procedures (or Nationwide general permit program, where appropriate). We would then initiate permit processing under the appropriate permit procedures.

d. The length of time required to process each request under this general permit will be directly related to the adequacy and completeness of the information submitted by the applicant.

The general permit will become effective on the date of the District Engineer's signature.

/s/ 2/28/97

RALPH H. GRAVES
Lieutenant Colonel, U.S. Army
District Engineer
Honolulu Engineer District
U.S. Army Corps of Engineer